

Assembly Bill No. 2214

CHAPTER 513

An act to add Sections 115010.5 and 115261 to, and to add Article 19 (commencing with Section 115273) to Chapter 8 of Part 9 of Division 104 of, the Health and Safety Code, and to repeal Section 11 of Chapter 1309 of the Statutes of 1990, relating to radioactive waste.

[Approved by Governor September 12, 2002. Filed
with Secretary of State September 12, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2214, Keeley. Low-level radioactive waste disposal facility.

(1) The existing Radiation Control Law requires the State Department of Health Services, among other things, to issue licenses, and prohibits the department from issuing a license to receive radioactive material for disposal unless specified requirements are satisfied, including that the land on which the radioactive wastes are to be buried is owned by the federal or state government.

Under existing law, the Southwestern Low-Level Radioactive Waste Disposal Compact specifies that California is to serve as the state required to host the regional low-level radioactive waste disposal facility for the permanent isolation of low-level radioactive waste pursuant to specified federal requirements and the requirements of the host state. A violation of the provisions regulating radioactive waste is a crime.

This bill would define terms and would prohibit the department from issuing a license for the disposal of low-level radioactive waste, or renewing a license, unless the department determines that the siting, design, operation, and closure of the facility complies with specified federal regulations. The bill would prohibit the department from issuing or renewing a license unless the design and construction of the facility meets specified requirements. The bill would allow the department to issue a license to dispose of low-level radioactive waste only if the department makes a specified determination that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment. The bill would require a facility for the disposal of low-level radioactive waste to meet specified design objectives and would prohibit a facility from disposing of low-level radioactive waste using shallow land burial. The bill would prohibit the proposed Ward Valley radioactive waste disposal site from serving as the state's facility for purposes of the compact and

would prohibit the state from accepting ownership or other property rights to the site of that facility.

Since a violation of the bill would be a crime, the bill would impose a state-mandated local program.

(2) Existing law requires the department to adopt emergency regulations for the licensing of persons engaged in the disposal of low-level radioactive waste by a specified date, and authorizes the department to establish and collect, by emergency regulation, a fee for the issuance or renewal of a license to receive radioactive material for disposal on land.

This bill would require the department to establish and collect a fee for the issuance or renewal of a license to dispose of low-level radioactive waste and would require that any fee collected be sufficient to cover the costs incurred by the state in reviewing an application, issuing or renewing the license, and inspecting and conducting oversight of the licensee.

The bill would require the department, when implementing the Radiation Control Law, to promote the reduction of low-level radioactive waste generated, by encouraging specified waste reduction practices.

(3) Existing law authorizes the State Director of Health Services, with the approval of the Director of General Services, to lease specified property to construct, operate, and close a low-level radioactive waste disposal facility.

This bill would repeal that authority.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Low-level radioactive waste generally is defined under federal and state laws as all radioactive waste other than spent reactor fuel, high level wastes from reprocessing spent fuel, certain high concentration wastes from nuclear weapons production, and uranium mill tailings. Low-level radioactive waste may include very long-lived materials, including plutonium-239, cesium-137, and strontium-90.

(b) In 1985, the federal Low-Level Waste Policy Amendments Act offered incentives to states to provide for the disposal of low-level



radioactive waste, preferably through the establishment of regional compacts. California entered into the Southwestern Low-Level Radioactive Waste Disposal Compact (Section 115255 of the Health and Safety Code) in 1987 with the States of Arizona, North Dakota, and South Dakota. Under this compact, the state agreed to host a disposal facility for low-level radioactive wastes for the first 30 years

(c) Section (C) of Article 2 of the Southwestern Low-Level Radioactive Waste Disposal Compact defines the term “disposal” to mean the permanent isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission and the Environmental Protection Agency under applicable laws, or by a party state if that state hosts a disposal facility.

(d) Article 5 of the compact requires that a disposal facility shall be approved by the host state in accordance with its laws.

(e) In 1988, Ward Valley in San Bernardino County was selected as the proposed disposal site. Ward Valley is near the Colorado River, which is an important source of water for Arizona, Mexico, and California, providing a water supply to areas such as Blythe, the Imperial Valley, the Coachella Valley, and urban southern California. The design of the facility proposed the shallow land burial of containers of low-level radioactive waste.

(f) Ward Valley land is owned by the federal government and would have to be transferred to the state in order for the Ward Valley disposal facility to be constructed by the state’s licensee. The state made significant efforts over a decade to obtain the land from the federal government. In 1999, the United States Bureau of Land Management formally denied the state’s request to purchase the Ward Valley land for use as a low-level radioactive waste disposal site, citing, among other matters, questions about the suitability of the site and the extensive studies and tests that would be needed. The state and the state’s licensee sued the federal government to require the federal government to transfer the land, but the court found in favor of the federal government.

(g) In the years since Ward Valley was selected as the disposal site, additional information has become available.

(h) There have been seven sites in the United States where commercial low-level radioactive wastes have been disposed. Radioactive materials have migrated in at least six of these sites, including one that has been designated as a site subject to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), which is also known as the “Federal Superfund Act.”

(i) There has been disagreement whether there is a hydrological connection between Ward Valley and the Colorado River. There also has



been disagreement whether there is a potential for radioactive wastes disposed of at Ward Valley to contaminate the Colorado River. In 1984, the US Geological Survey found that the Ward Valley aquifer is a basin from which groundwater drains in the southerly direction toward the Colorado River.

(j) In 1993, the California Senate Office of Research released, “How Safe? Issues Raised by the Proposed Ward Valley Low-Level Radioactive Waste Facility.” The report raised the following issues: (1) the potential for waste migration and groundwater contamination, (2) the adequacy of shallow land burial as a disposal method, (3) the lack of consideration of measures to minimize waste disposal, (4) the understatement of the risks of the waste stream, (5) lack of a redundant system for waste containment, (6) the site operator’s track record, (7) the potential for importation of out-of-compact wastes, and (8) problems with the low-level radioactive waste classification scheme.

(k) The Ward Valley site, subsequent to its selection as a prospective location for a radioactive waste disposal facility, was designated as critical habitat for the desert tortoise, a threatened species under the endangered species act.

(l) The Ward Valley land is considered sacred by several Native American tribes.

(m) In 2000, at the request of Governor Gray Davis, Richard Atkinson, President of the University of California, chaired a committee that prepared a report entitled, “Management and Disposal of California’s Low-Level Radioactive Waste.” The report described the four main options: (1) continue the status quo, (2) divide, manage, and dispose of the waste stream by half-life, allowing different criteria to be applied to the design and disposal for each type of waste, (3) build an “Assured Isolation Facility” with the commitment to monitor and maintain the facility until the wastes can be acceptably abandoned or managed in a different manner, and (4) design, site, license, and construct a new disposal facility or relicense an existing disposal facility as a low-level radioactive waste facility. The report did not make recommendations on which option should be adopted.

(n) In 2002, review of the state’s licensee’s application for renewal of the Ward Valley license was suspended by the State Department of Health Services pending the outcome of litigation related to the license. The department reserved its authority to review the request for renewal, including the requirement that the application for renewal be filed in a timely manner.

SEC. 2. The Legislature further finds and declares all of the following:



(a) Given the many problems, concerns, and issues attached to the Ward Valley site and the lack of progress toward construction, it is an appropriate time for the state to reevaluate how it intends to provide for disposal of low-level radioactive waste and to carry out its fiduciary responsibilities to protect public health, the economy, and the environment.

(b) Because of the need to protect public health and the environment, it is appropriate for the state to (1) prohibit shallow land burial of low-level radioactive waste because of the potential for the migration of radioactive waste beyond the site and to groundwater, and (2) require that a facility be designed and constructed to permanently isolate the radioactive waste to protect public health and the environment.

(c) Because of the immense importance of the Colorado River to California, Arizona, and Mexico, it would be inappropriate for the State of California to further consider the proposed Ward Valley low-level radioactive waste disposal site. Thus a low-level radioactive waste disposal facility should be sited elsewhere.

(d) A low-level radioactive waste disposal facility should also be sited to comply with state and federal environmental laws and to recognize the importance of sacred Indian lands.

(e) The Nuclear Regulatory Commission has established standards for the management and disposal of low-level radioactive waste. The state enforces those standards through an agreement with the commission. These standards contain requirements, including the performance objectives for radiation exposure, for the design, operation, and closure of a near-surface disposal facility.

(f) The state may establish alternative standards for the design of a disposal facility, if those standards would, at a minimum, comply with the performance objectives for radiation exposure established by the Nuclear Regulatory Commission.

(g) It is the intent of the Legislature to establish standards for the disposal of low-level radioactive waste to permanently isolate low-level radioactive waste, with the goal of protecting public health and the environment.

SEC. 3. Section 115010.5 is added to the Health and Safety Code, to read:

115010.5. The department shall, by regulation, establish and collect a fee for the issuance or renewal of a license to dispose of low-level radioactive waste pursuant to this chapter. The fees collected shall be sufficient to cover the state's cost in reviewing the application, issuing or renewing the license, and inspecting and conducting oversight of the licensee.



SEC. 4. Section 115261 is added to the Health and Safety Code, to read:

115261. (a) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the department determines that the siting, design, operation, and closure of the facility will, at a minimum, comply with the performance requirements and objectives of the Nuclear Regulatory Commission specified in Part 61 of Title 10 of the Code of Federal Regulations.

(b) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the disposal facility is sited, designed, constructed, and operated to do all of the following:

(1) Consist of multiple, engineered barriers to provide for the retention of the radioactive waste within the engineered barriers to last not less than 500 years, using best available technology.

(2) Provide visual inspection or remote monitoring to detect potential or actual releases of low-level radioactive waste from the engineered barriers.

(3) Provide methods to prevent potential releases or remediate actual releases of low-level radioactive waste from the engineered barriers when monitoring detects potential or actual releases.

(4) Be sited in a location and with soils and hydrology that, if the engineered barriers fail, the natural site characteristics would minimize migration of radioactive materials.

(c) A facility for the disposal of low-level radioactive waste may not use shallow land burial.

(d) (1) The department may issue a license to dispose of low-level radioactive waste pursuant to this chapter only if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment.

(2) The proposed Ward Valley low-level radioactive disposal site in San Bernardino County may not serve as the state's low-level radioactive disposal facility for purposes of Article 5 of the compact.

(3) The state may not accept ownership or any other property rights to the site of the Ward Valley low-level radioactive waste disposal facility.

(e) For the purposes of this section, the following terms have the following meanings:



(1) “Commission” means the United States Nuclear Regulatory Commission.

(2) “Compact” means the Southwestern Low-Level Radioactive Waste Disposal Compact described in Section 115255.

(3) “Department” means the Department of Health Services.

(4) “Low-level radioactive waste” has the same meaning as defined in Article 2 of the compact.

(5) “Low-level radioactive waste disposal facility,” or “facility” means all contiguous land and structures, other appurtenances, and improvements, on the land used for the disposal of low-level radioactive waste.

(6) “Shallow land burial” means the disposal of low-level radioactive waste in or within the upper 30 meters of the earth’s surface without the use of additional confinement by engineered barriers. Shallow land burial does not include the disposal of low-level radioactive waste if the disposal facility meets the requirements of subdivisions (b) and (c).

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. Section 11 of Chapter 1309 of the Statutes of 1990 is repealed.

SEC. 6. Article 19 (commencing with Section 115273) is added to Chapter 8 of Part 9 of Division 104 of the Health and Safety Code, to read:

Article 19. Radioactive Waste Reduction

115273. In implementing this chapter, the department, consistent with other requirements imposed by this chapter to protect public health and safety, shall promote the reduction of low-level radioactive waste generated, both in volume and radioactivity, by encouraging waste reduction practices, including, but not limited to, all of the following:

(a) The minimization of waste produced by employing best practices to reduce the amount of contaminated materials;

(b) The substitution and use of nonradioactive materials or radioactive materials with shorter radioactive half-lives; and

(c) The compaction of low-level radioactive waste to reduce the volume of waste that must be transported and disposed of in the state.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

